



UNITED STATES | ENGLAND | GERMANY | CHINA

December 18, 2009

Hon Donovan W. Frank
United States District Court
Warren E. Burger Federal Bldg., suite 724
316 N. Robert Street
St. Paul, MN 55101

Re: *Sierra Club et al. v. Clinton et al.*, Civ. No. 0:09-cv-02622 (DWF-RLE) —
Reply in Support of Supplement to Enbridge's Opposition to Plaintiff's Motion for Preliminary Injunction

Dear Judge Frank:

Plaintiffs' December 17, 2009 letter requests that the Court disregard the information on construction of the Alberta Clipper pipeline through a fen area that Defendant-Intervenor Enbridge Energy, Limited Partnership ("Enbridge") provided in its December 15 submission supplementing Enbridge's Opposition to Plaintiff's Motion for Preliminary Injunction. Plaintiffs argue that the information is "irrelevant, untimely and not part of the administrative record."

In their discussion of alleged irreparable harm, Plaintiffs raised the issue of the construction of the pipeline though the fen area. *See* Plaintiffs' Memorandum, at 20 (Dkt. 93). Enbridge countered in its Opposition that any such construction would be subject to a management plan, which would require approval by regulatory authorities, that would be designed to avoid irreparable impacts. *See* Enbridge Opposition at 35 (Dkt. 78); Crawford Dec. ¶ 34 (Dkt. 79). Enbridge has now provided the Court with additional facts on this point in the form of a carefully crafted fen management plan that has been developed and various recent regulatory approvals of that plan.

Plaintiffs' claim of irrelevance falls in the face of these facts, as does its unexplained claim of untimeliness. Further, Plaintiffs' argument that this information and material should be disregarded because it is not part of the administrative record calls into question whether the voluminous extra-record materials that Plaintiffs have supplied in support of their motion for preliminary injunction, including for example, the May Declaration, Norrgard Declaration, Davis Declaration, Johnson Declaration, etc. (*see* Dkt. 116-123), should be considered by the Court. Their argument is also at odds with their own contention that, "declarations of harm for preliminary injunctions are well-recognized exceptions to the limitations on record review." Plaintiffs' Reply at 31 (Dkt. 130). If that is correct, then surely the Court can consider material outside the record that disproves the claim of irreparable harm.

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Respectfully,

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cc: All parties of record